



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 24, 2005

Mr. A. Wade Norman  
Bracewell & Patterson L.L.P.  
500 North Akard Street, Suite 4000  
Dallas, Texas 75201-3387

OR2005-01635

Dear Mr. Norman:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221190.

The Frankston Independent School District (the "school district"), which you represent, received a request for all written records concerning the requestor's child. You state that the school district has released most of the requested information. You claim that the submitted information is excepted from disclosure under section 552.026 of the Government Code in conjunction with the federal Family Education Rights and Privacy Act of 1974 ("FERPA"). We have considered the exception you claim and reviewed the submitted information.

Initially, we note your statement that the school district has redacted the names of students from the submitted information pursuant to Open Records Decision No. 634. *See* Open Records Decision No. 673 at 7-8 (2001) (decisions such as Open Records Decision No. 634 may be relied on as previous determinations only so long as five criteria are met); Open Records Decision No. 634 at 3 n. 3 (1995). Accordingly, this ruling does not address such information.<sup>1</sup>

You raise section 552.026 in conjunction with FERPA for the remaining submitted information. *See* 20 U.S.C. §§ 1232g. FERPA provides that no federal funds will be made

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<sup>1</sup> We note, however, that you have also redacted the name of the requestor's child from the submitted information. You must release this information to the requestor. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents affirmative right of access to their child's education records).

available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.<sup>2</sup> *See id.* § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes both information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Having reviewed the submitted information at issue, we have marked the information that must be withheld in accordance with FERPA. The remaining submitted information at issue does not personally identify a particular student and it may not be withheld under FERPA. As such, it must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

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<sup>2</sup> Section 552.026 provides that the Act "does not require the release of information contained in education records of an educational agency or institution, except in conformity with the [FERPA]." Gov't Code § 552.026. Section 552.114 of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." *Id.* § 552.114(a). This office generally has treated a "student record" under section 552.114 as the equivalent of an "education record" under FERPA. *See* Open Records Decision No. 634 at 5 (1995).

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 221190

Enc. Submitted documents

c: Ms. Donna Garrow  
P.O. Box 458  
Frankston, Texas 75763  
(w/o enclosures)